DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 00-0354
Corporate Income Tax
For the Tax Year Ending January 3, 1993

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax-Imposition of Tax

Authority: IC 6-8.1-5-1 (b), IC 6-2.1-2-2, 45 IAC 1-1-120.

The taxpayer protests the imposition of tax on income from sales to Indiana customers.

II. Tax Administration- Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The taxpayer protests the imposition of penalty.

STATEMENT OF FACTS

The taxpayer is a manufacturer of pharmaceutical products. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional gross income tax, interest, and penalty for the tax year ending January 3, 1993. The taxpayer protested the assessment and penalty. A hearing was held and this Letter of Findings results.

I. Gross Income Tax-Imposition of Tax

The taxpayer employed sales representatives throughout the United States. The sales representatives detailed the taxpayer's products to physicians. This entailed discussion in depth of the indications, possible side effects, and results of clinical studies of the taxpayer's products. Almost all the customers who actually purchased the taxpayer's products in Indiana were wholesalers, chains, and clinics. The sales representatives did not perform services for customers; maintain inventory of goods for sale; distribute merchandise for sale; or accept, reject, or approve orders.

The taxpayer operated an administrative sales office in Indiana for part of the year 1992. This office consisted of a District Manager and an Office Coordinator. The office occupied 450 square feet of space. The District Manager was in charge of regional sales representatives in Indiana and the surrounding states. None of the sales representatives used the taxpayer's administrative office as their personal office.

The department assessed gross income tax on the taxpayer's income from sales of pharmaceuticals in Indiana during the tax year ending January 3, 1993. The taxpayer protests this assessment contending that it did not have adequate nexus in Indiana to subject its Indiana sales to Indiana gross income tax. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The department imposed gross income tax on the taxpayer pursuant to IC 6-2.1-2-2 as follows:

> An income tax, known as the gross income tax, is imposed upon the receipt of:
>
> (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

Indiana gross income tax is imposed on a nonresident's income from the sale of products shipped into Indiana when it meets the test set out at 45 IAC 1-1-120 as follows:

> Taxable Inshipments: (a) Sales made by a nonresident, when the seller has established a business situs within the state, and the sales originated from, were channeled through or were otherwise connected with the Indiana situs, . .

The taxpayer agrees that it had a business situs in Indiana during the tax year ending January 3, 1993. The taxpayer argues, however, that the activities of the administrative office were not adequately connected to its sales within Indiana to subject the receipts from those sales to the Indiana gross income tax. Although the Indiana office did not process orders or maintain inventories for delivery, it did serve an important role in working with the sales representatives to help them expand territory market share and develop positive business relationships with customers. These vital services to the sales representatives helped the sales representatives increase sales of taxpayer's products in the state. This connection between the Indiana business situs and the Indiana sales subjects the income derived from these sales to the Indiana gross income tax.

FINDING

The taxpayer's protest is denied.

II. Tax Administration- Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer presented sufficient evidence to sustain its burden of proof that it was not negligent in its failure to pay the proper amount of tax in this instance.

FINDING

The taxpayer's protest is sustained.

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